

Water Right Compact Negotiations Update
Reserved Water Rights Compact Commission
Water Policy Interim Committee – September 11, 2012

Confederated Salish & Kootenai Tribes (CSKT)-Montana Compact

Primary components of the Compact include:

- Provisions for protection of existing state-based water users;
 - Call protection for non-irrigation users
 - Protections for irrigators
- Quantification of Tribal on-reservation water rights
 - Instream flow for fish & wildlife
 - High mountain lakes & Wetlands
 - Flathead Indian Irrigation Project
 - Flathead System Compact Water
 - Uses by Tribes, Tribal members and allottees
- Establishment of an ordinance for the administration of water rights on the reservation;
 - Largely parallels Montana Water Use Act
 - Solution to current regulatory void
 - Unitary Management Board
 - Registration of Existing Uses
 - Incorporates pending domestic well certificates, permits, & changes
 - Domestic & Stockwater Allowance
 - Permit and Change Process
 - Enforcement
- Proposal for Resolution of the CSKT claims to off-reservation water rights;
 - Stevens Treaty – right to take fish in usual and accustomed locations
 - Bitterroot River – Beneficial interest in MFWP contract water & co-ownership of recreation claims
 - Kootenai & Swan Rivers – mainstem water right, non-consumptive, instream use only, call protection for all non-irrigation & groundwater < 100 gpm, new appropriation limits on important bull trout tributaries, no limitation on uses excepted from permitting
 - Concerns raised by Lincoln County about Kootenai basin limitations and co-ownership of certain FWP water rights. RWRCC consulting with Lincoln County and Tribes about best way to move forward.
 - Upper Clark Fork – Co-ownership with MFWP of Milltown Dam water right, Murphy Rights, and recreation claims
 - State Proposal re. Milltown right – 1904 priority date, non-consumptive instream flow right, 2000 cfs maximum and 1100 cfs minimum. Non-irrigation use not callable.
 - Tribes' response to the State's proposal – 1200 cfs minimum, broken down to 700 cfs minimum from the Blackfoot@Bonner & 500 cfs minimum from the Clark Fork@Turah, added basins for new appropriation limits

- State contribution to settlement.
 - Crow (1999) \$15 million; Fort Belknap (2001) \$17.5 million; Blackfeet (2009) \$35 million
 - CSKT - Components likely to include support for Flathead Indian Irrigation Project and Stock Water mitigation program (as part of protecting existing water users); implementation funding (for Water Management Board and unitary administration); and settlement support as negotiated.
- Negotiations are ongoing. A draft of the Compact is anticipated to be available for public review in Fall 2012.

US Fish & Wildlife Service Charles M. Russell National Wildlife Refuge (CMR)-Montana

Compact

- The initial compact proposal from the FWS met with substantial public concern at negotiation sessions held in Lewistown. Primary concerns with proposed closure to future appropriations (uses excepted from permitting requirements not included), the extent of the area affected, and inclusion of groundwater.
- Discussions with FWS ongoing. RWRCC developing position with following concepts:
 - FWS subordinate priority date to date of compact
 - Current exceptions under § 85-2-306, MCA, are excepted from compact.
 - No specific restrictions on groundwater development
 - On-stream impoundment limitations (> than exception limits) for select streams
 - Quantification of instream right for base-flow & limited period for streams draining into Refuge.
 - Recognize a right to base flow (70 cfs) for the Musselshell River consistent with MFWP right, except with priority date of effective date of compact. Rights run concurrently, not cumulatively.

US Bureau of Land Management Upper Missouri River Breaks National Monument (UMRBNM)-Montana Compact

- Proclamation (2001) designating the Monument limits the reservation of water to Judith River and Arrow Creek basins.
- Negotiations held in Lewistown January 31, March 8, May 1, & September 6, 2012.
- Draft compact available on RWRCC webpage <http://www.dnrc.mt.gov/rwrcc/default.asp>
- All valid existing uses protected. The United States has agreed to subordinate its 2001 priority date to June 1, 2012.
- Current exceptions under § 85-2-306, MCA, are also excepted from provisions of compact. Post-compact exemptions are not subject to call.
- Quantified base flow for Judith River (160 cfs) a duplicate of MFWP water reservation with a junior priority date; these instream rights run concurrently, not cumulatively.
- Quantified base flow for Arrow Creek (5 cfs) is seasonal (3/1 - 7/31) and junior.
- Restriction on new mainstem storage on Arrow Creek and the Judith River.
- Ramping requirements on new large (>20 cfs) direct from source diversions.
- Public meetings to be held at Winifred and Stanford.